

89- 1382⁽¹⁾

Supreme Court, U.S.

FILED

DEC 4 1989

JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

October, 1990

* * *

JAMES D. FREED,

PETITIONER

V.

THE UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT, CINCINNATI, OHIO,

RESPONDENT

* * *

PETITION

FOR WRIT OF MANDAMUS
RE THE 9/20/89 MANDATE OF DISMISSAL
OF APPEAL NO. 88-2264

* * *

"IN RE" James D. Freed
3370 Fourth Street
Twin Lake, MI 49457
616/828-4395

25P



QUESTIONS PRESENTED

(1) Can the named Respondents dismiss (sand bag) appeal No.88-2264 with sanctions, under color of Rule 38 FRAP and inapplicable case law(i.e.Schiff v Simon and Schuster Inc.766 F 2d 61,62,2 Cir.1985) when said "dismissal abridges my unqualified Title 28 USC Section 2072 substantive right to due process of law/right to appeal ?

(2) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified Rule 4 FRAP substantive "APPEAL AS OF RIGHT" ?

(3) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified First Amendment Right to freedom of speech and freedom of the press ?

(4) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal" abridges my unqualified 9th Amendment Right to freedom of speech and freedom of the press ?

(5) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inaplicable case law (Sciff supra) when said "dismissal" abridges my unqualified Preamble To The Bill Of Rights Right to defend against IRS Misconstruction And Abuse Of Power ?

(6) Is Respondents' claim of discretion to dismiss Appeal No.88-2264, pursuant to Rule 38 FRAP and Schiff (supra), a misconstruction and abuse of power ?

(7) Can said Respondents dismiss (sandbag) appeal No.88-2264 with sanctions under color of Rule 38 FRAP and inapplicable case law (Schiff supra) when said "dismissal"

abridges my right as a citizen to be free from sanctions as mandated by U.S. v Texas, 384 US 155; Wilson v U.S., 221 US 361; and Pollack v Flint, 158 US 601, 157 U.S. 429; ? (see attached Memorandum Of Law)

(8) Is Rule 38 FRAP repugnant to the Constitution and therefore NULL and VOID pursuant to the constitutional principles as adopted in Marbury v Madison 5 US (2 Cranch) and therefore unconstitutional ?

(9) Is the 14th Amendment to the United States Constitution repugnant to said Constitution and therefore NUL and VOID pursuant to the challege in the attached "AFFIDAVIT OF STATUS" ?

(10) The foregoing constitutional, statutory and judicial questions demand full judicial cognizance pursuant to this Court's Appellate Jurisdiction.

PARTIES

Petitioner James D.Freed, a sovereign citizen of the State Of Michigan living and domiciled in Muskegon County Michigan, is hereby appearing In Propria Personna.

Respondent LIVELY is Senior Circuit Judge for the United States Court Of Appeals, Sixth Circuit, 538 U.S.Post Office and Courthouse Building in Cincinnati, Ohio.

Respondent Merrit is a Circuit Judge for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio, 45202-3988.

Respondent Martin is a Circuit Judge for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio. 45202-3988

Respondent Leonard Green is Clerk for the United States Court Of Appeals, Sixth Circuit 538 U.S.Post Office and Courthouse Building, Cincinnati, Ohio, 45202-3988.

PETITIONER'S AFFIDAVIT

OF NONTAXPAYER STATUS

STATE OF MICHIGAN)
) SS
COUNTY OF MUSKEGON)

KNOW ALL MEN BY THESE PRESENTS:-

THAT I, James D. Freed, Petitioner/Affiant

hereby deposes and says:-

THAT "The revenue laws are a code or system in regulation of tax assessment and collection. They relate to TAXPAYERS and not to NONTAXPAYERS. With them Congress does not assume to deal, and they are neither of the SUBJECT nor of the OBJECT of the revenue laws" First Nat'l Bank Emlenton Pa. v U.S. 161 F Supp. 847(DC WD Pa. 3 Cir.1958)
(emph.added)

THAT I am a citizen of the State Of Michigan which State is one of the several sovereign United States Of America.

THAT I am living and domiciled in the County of Muskegon, outside of the Territorial Jurisdiction of the Internal Revenue Service as denoted in Article 1, Section 8, Clause 17 of the United States Constitution.

THAT There is no Section of the Internal Revenue Code (Title 26) that imposes a tax upon me and/or my common law nontaxable activity of "sign artist"; or that makes me and/or my activity liable for any tax.

THAT My "nontaxable activity compensation" is derived from sources within the United States.

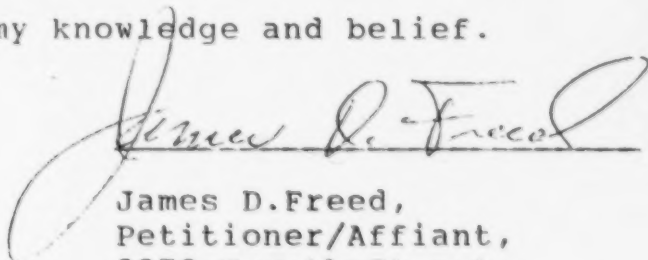
THAT I am not now, nor have I ever been engaged in the making, production or keeping of articles or objects subject to tax; nor am I now, nor have I ever been engaged in any revenue taxable activity/event such as the importing, manufacturing or sales of distilled spirits, tobacco products, tires, chemicals, seabed minerals, sportsfishing equipment, hazardous waste or petroleum products etc. as denoted in 26 USC Subtitles A, D, or E.

THAT I am not a non-resident alien as denoted in 26 USC Section 871, the unconstitutional 14th Amendment notwithstanding; nor am I a foreign corporation as denoted in

26 USC Section 881, the unconstitutional
14th Amendment notwithstanding.

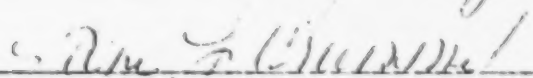
THEREFORE Relying on the foregoing deposed
statements I hereby claim the lawful status
of NONTAXPAYER.

I, James D. Freed, the Petitioner/Affiant,
hereby declares and affirms that all of the
foregoing statements are true and accurate
to the best of my knowledge and belief.



James D. Freed,
Petitioner/Affiant,
3370 Fourth Street,
Twin Lake, Michigan,
49457
616-828-4395

Subscribed and sworn to before me
this 22 day of January 1990



Notary Public, Muskegon County,

My Commission expires 11-17-92

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JUDICIAL NOTICE

The Court will please take judicial notice that the Petitioner, relying on the case of Echoles v Voisene, has made necessary corrections in this instant Petition For Writ Of Mandamus.

"Pro se litigants cannot be held to the same rigid standards that an attorney can be....."
Echoles v Voisene 506 F Supp. 15;

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

JAMES D.FREED

PETITIONER

VS

SENIOR CIRCUIT JUDGE LIVELY
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

VS

CIRCUIT JUDGES MERRIT AND MARTIN
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

VS

LEONARD GREEN, CLERK
UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT,CINCINNATI,OHIO, RESPONDENT

PETITION FOR WRIT OF MANDAMUS
AGAINST RESPONDENTS LIVELY,MERRIT,MARTIN AND
GREEN FOR THEIR SEPTEMBER 20th,1989 MANDATE
OF DISMISSAL OF THIS PETITIONER'S APPEAL NO.

88-2264

PROCEEDING BELOW

On the date of September 20/89 the named Respondents of the Sixth Circuit Court Of Appeals MANDATED (see Appendix Ex.A) the dismissal of my appeal No.88-2264 under color of Rule 38 FRAP and inapplicable case law (Schiff supra).

This Petitioner alleges that Respondents' "mandate of dismissal" was an unlawful and unconstitutional action to prevent said Appeal No.88-2264 from review by this Court thus doing violence to this Court's Appellate Jurisdiction and to this Petitioner's substantive "APPEAL AS OF RIGHT".

JURISDICTION OF THE COURT

The United States Supreme Court has jurisdiction to grant this Petition For Writ Of Mandamus against the named Respondents of the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio pursuant to Title 28, USC, Section 1651(a).

JURISDICTION C'T'D

On the date of May 30th 1989 said Sixth Circuit Respondents dismissed Appeal No.88-2264 under color of Rule 38 FRAP and inapplicable case law (i.e.Schiff v Simon and Schuster In, 766 F 2d 61,62,2 Cir.1985) absent the Court Seal as required by Title 28 USC Section 1691 which leaves said "dismissal"a nullity.

On the date of June 9/89 this Petitioner filed an Application For Reinstatement.

On the date of August 4/89 said Respondents denied said Application For Reinstatement, absent the Court Seal required by Sec.1691.

On the date of August 11/89 this Petitioner filed a Motion For Rehearing.

On the date of September 5/89 Respondents denied the Motion For Rehearing absent the Court Seal required by Section 1691.

On the date of September 14/89 this Petitioner filed an OBJECTION to the September 5th, 1989 "denial".

On the date of September 20th 1989 the said Respondents MANDATED the dismissal of May 30 1989 and which "MANDATE" was stamped "True Copy" and signed by Deputy Clerk Tom Bennignus. (see Appendix Ex.A)

On the date of September 29th 1989 this Petitioner filed a Notice Of Appeal in the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio. (Appendix Ex.B)

On the date of October 3/89 the Deputy Clerk for said Sixth Circuit sent Petitioner a letter claiming that Congress had abolished appeals to the United States Supreme Court. (Appendix Ex.C)

Petitioner submits the following case law in support of jurisdiction re the Rights claimed in the foregoing QUESTIONS PRESENTED on pages i, ii, and iii:-

"Mandamus lies to enforce an established right, for the invasion of which no other specific legal remedy exists"
Marbury v Madison 1 Cranch 137

CONSTITUTIONAL PROVISIONS

The United States Supreme Court has Appellate Jurisdiction under Article III, United States Constitution -

Section 1 "The judicial Power of the United States, shall be vested in one supreme Court, and....."

Section 2 "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution....."

STATEMENT OF THE CASE

This instant matter began when IRS agent Patrick Finnegan of Muskegon, Michigan, ABSENT HIS LETTER OF DELEGATED AUTHORITY as required by TITLE 26 USC SECTION 7803(a)(b)(1)(2) seized two of my checks totalling \$351.80 (with threats of more massive seizures) and which checks were owed to me for services rendered to two of my customers. This unlawful seizure (theft) was made in spite of the fact that, over a period of several months, an assortment of IRS agents had repeatedly maintained "silence" when I had repeatedly requested "proof" that I am

\ a "person required" to file returns and pay a tax.

Since the IRS chose not to respond to my numerous requests, I concluded that I am not a "person required" and I subsequently filed a "notice" of tax exempt status with the Registrar Of Deeds in Muskegon, Michigan and which "notice" was a result of their tacit agreement (silence) that I am not a "person required". (Appendix Ex.D)

So in response to Agent Finnegan's seizure of my funds (theft) I filed Civil Complaint No.88-24161-AZ (jury demanded) in the Muskegon County Circuit Court in Muskegon Michigan on the date of August 2,1988 naming Patrick Finnegan and five other officials as defendants-----unlicensed Circuit Court Judge Michael E.Kobza presiding.

Unlicensed Judge Kobza dismissed said Complaint with prejudice (without a hearing) on the date of August 15,1988. However, on the day following the dismissal (August 16/88) unlicensed AUSA Janice Kittel Mann of Kalamazoo, Michigan unlawfully removed the "dis-

missed" Complaint to the United States District Court in Kalamazoo, Michigan under color of alleged "bar" number and relying on inapplicable statutes.

The unlawfully removed Complaint was filed under District Court NO.6-88-607CA6 to be adjudicated by U.S.District Court Judge Richard A.Enslen who lacked territorial jurisdiction over the unlawfully removed Complaint.

On the date of August 26,1988, I filed an Amended Complaint in said District Court to include said Judge Michael E.Kobza and AUSA Janice Kittel Mann as Defendants, suing them for lack of jurisdiction since neither of them possessed the license to practice law as required by Michigan Law MCL 600..916. (NOTE: Judge Kobza's "Order Of Dismissal" was based upon a TAXPAYER'S obligation and not upon this Petitioner's NONTAXPAYER status.)

Subsequently there was an exchange of Motions,Objections and Orders etc as enumerated in the attached Docket Sheet(Appendix Ex.E)

which includes my Objection to the unlawful removal of my Complaint.

Following the dismissal, by District Court Judge Richard A. Enslen, of my "ALREADY DISMISSED" Complaint, I filed a Notice Of Appeal with the United States Court Of Appeals Sixth Circuit, Cincinnati, Ohio on the date of September 29, 1988. My Appeal Brief presented a total of 23 issues and a statement with argument, (see Appendix Ex.F, 32 pages). Since the Government's scheme is to remain "silent" re the 23 issues as raised in my Appeal Brief, said Government filed a Motion To Dismiss based upon the unconstitutional Rule 38 FRAP and upon the aforesaid inapplicable case law. (Schiff supra)

The Respondents granted the Government's Motion To Dismiss on the date of May 30/89. As previously shown, on the date of June 9/89 I filed an Application For Reinstatement.

On the date of August 4/89 my Application For Reinstatement was denied.

On the date of August 11/89 I filed a Motion For Rehearing which was denied on the date of Septmber 5/89.

On the date of September 14/89 I filed an Objection to the Order of September 5/89 which was answered by the Government on the date of September 20/89 with a MANDATE Of Dismissal of my appeal No.88-2264, and which MANDATE is the subject of this instant Petition For Writ Of Mandamus.

REASONS FOR GRANTING WRIT

Title 28 USC Section 2072 states (in part):-

"Such rules shall not abridge,
enlarge or modfy any substantive
right" (emph.added)

The Sixth Circuit Respondents,United States Court Of Appeals,Cincinnati,Ohio have abridged this Petitioner's 9th Amendment substantive right to appeal the matter of:-

"James D.Freed v United States of America,Patrick Finnegan,Unknown IRS Agent,John O.Hummel, E.P. Erickson,Douglas W.Hillman, and John A.Smietanka, (County Court No. 88-24161-AZ; District Court No. 6-88-607CA6; and Appeals Court No. 88-2264"

by their Mandate Of Dismissal of Appeal No.

88-2264 under color of Rule 38 FRAP and inapplicable case law; said Mandate Of Dismissal being a ploy to avoid/prevent an embarrassing Appellate Court and Supreme Court review of the 23 issues as presented in this Petitioner's Appeal Brief.

Should this Supreme Court grant this instant Petition For Writ Of Mandamus said grant would support Petitioner's 9th Amendment Right to proceed with Appeal No.88-2264 and justice will be served. However, if the Writ of Mandamus is not granted to command the Respondents to vacate all orders and to reinstate Appeal No.88-2264 then this Petitioner will be forced to suffer irreparable Constitutional injury, the Government will be allowed and encouraged to remain fraudulently "silent" regarding the 23 issues in my Appeal Brief, which "silence" is contrary to the teachings of U.S. v Tweek 550 F 2d 297, 299-300(1977), and this Court's Appellate Jurisdiction will suffer violence.

MEMORANDUM OF LAW

"The citizen is immune, has a right to be free from such taxation, and regulations, duties, obligations, SANCTIONS as a matter of law" (emph. added)
U.S. v Texas, 384 U.S. 155; Wilson v U.S. 221 U.S. 361; Pollack v Flint 158 U.S. 601; 157 U.S. 429:

and

"Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading..... we cannot condone this shocking conduct by the IRS (emph. added)
United States v Tweel 550 F 2d 297, 299-300(1977);

and

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgements..(emph. added)
U.S. v Throckmorton 98 US 61

and

".....but insisting that it was vitiated by fraud, which vitiates everything" (emph. added)
Boyce's Executors v Grundy 3 Peters 210-221 7 L. Ed. 655

REMEDY SOUGHT

WHEREFORE since the Government's "SILENCE" equates with fraud, and since fraud vitiates the Respondents' Mandate of September 20/89 and all former orders and since Rule 38 FRAP abridges my 9th Amendment substantive

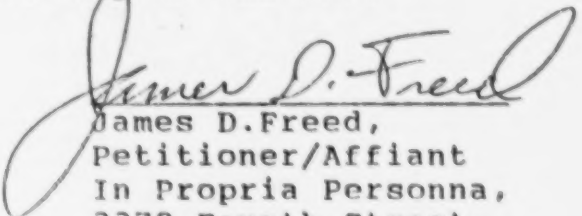
right to appeal, and since this Court has agreed that citizens are immune from sanctions as a matter of law, then this Petitioner requires that, in order to reserve his 9th Amendment Right to perfect his appeal and to preserve this Court's Appellate Jurisdiction, that this Honorable United States Supreme Court grant this instant Petition For Writ Of Mandamus against the herein named Respondents commanding them to vacate the Mandate of September 20/89 and all other orders and to reinstate Appeal No.88-2264 forthwith.

The Petitioner having raised such timely objections and having them denied now concludes that he has no other adequate remedy at law and is therefore entitled entitled to a Writ Of Mandamus against the herein named Respondents of the United States Court Of Appeals, Sixth Circuit, Cincinnati, Ohio.

AFFIDAVIT

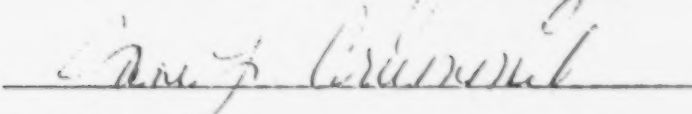
IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

I, James D Freed, the Petitioner/affiant
hereby declares and affirms that all of the
foregoing statements contained in this inst-
ant Petition For Writ Of Mandamus are true
and correct to the best of my knowledge and
belief and understanding of the law.


James D. Freed,
Petitioner/Affiant
In Propria Personna,
3370 Fourth Street,
Twin Lake, Michigan,
49457

Subscribed and sworn to before me

this 22 day of January 1990



Notary Public, Muskegon County,

My Commission expires 11-17-92.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

JAMES D.FREED,	)	PETITION
)	
PETITIONER,	)	FOR WRIT OF
)	
VS	)	MANDAMUS
)	
SENIOR CIRCUIT JUDGE LIVELY,	)	AGAINST THE
)	
CIRCUIT JUDGES MERRIT AND	)	SIXTH
)	
MARTIN and CLERK LEONARD	)	CIRCUIT
)	
GREEN, UNITED STATES COURT OF	)	RESPONDENTS
)	
APPEALS, SIXTH CIRCUIT,	)	OF THE
)	
CINCINNATI, OHIO,	)	U.S.COURT
)	
RESPONDENTS,	)	OF APPEALS

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of this Petition For Writ Of Mandamus has been served/mailed to the Respondents at 538 U.S.Post Office and Courthouse Bldg. Cincinnati, Ohio, 45202-3988.

Date Feb. 28/1990

James D. Freed
James D. Freed, Petitioner

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE—POSTMASTER	
Received From:	
JAMES D. FREED	
3370 4TH. ST.	
TWIN LAKE, MI. 49457	
One piece of ordinary mail addressed to:	
SOLICITOR GENERAL	
DEPARTMENT OF JUSTICE	
WASHINGTON D.C. 20530	

Affix fee here in stamps
or meter postage and
post mark. Inquire of
Postmaster for current
fee.



FILED

DEC 4 1989

JOSEPH F. SPANOL, JR.
CLERK

No. _____

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

October, 1990

* * *

JAMES D. FREED,

PETITIONER

v.

THE UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT, CINCINNATI, OHIO,

RESPONDENT

* * *

APPENDIX

TO THE PETITION FOR WRIT OF HABEAS CORPUS
RE THE 9/20/89 MANDATE OF DISMISSAL
OF APPEAL NO. 89-2264

* * *

"IN RE" James D. Freed
3370 Fourth Street
Twin Lake, MI 49457
616/828-4395

1/6/92



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Court of Appeals), Page 32-75

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

CINCINNATI, OHIO

JAMES D. FREED,

Plaintiff-Appellant,
Pro Per

CASE NO.
88-2264

v.

DISTRICT
COURT NO.
88-00607/
Enslen

UNITED STATES OF AMERICA ;
PATRICK FINNEGAN; UNKNOWN
IRS AGENT; JOHN O. O'HUMMEL;
E.P. ERICKSON; DOUGLAS W.
HILLMAN; JOHN A. SMETANKA;
JANICE KITTEL MANN; MICHAEL
E. KOBZA,

ORDER

Defendant-Appellees.

Before: MERRITT and MARTIN, Circuit
Judges; and LIVELY, Senior
Circuit Judge

This matter is before the Court on
Plaintiff's motions to disqualify Attorney
Janice Kittel Mann, for default judgment,
and for sanctions. Defendants move to
dismiss the instant appeal for Plaintiff's

failure to satisfy a Fed. R. App. P. 38 sanction imposed in a prior appeal, namely, Freed v. Parks, No. 87-1749 (6th Cir. April 1, 1988).

Upon consideration, we find defendants' position to be well made. It is uncontested that Plaintiff has yet to satisfy the previously levied sanction; he responds that the award was somehow vague or misleading. We have reviewed the prior order and find that it clearly states the terms of the Fed. R. App. P. 38 sanction. "Damages awarded for frivolous appeals are not part of a running account between a vexatious litigant and his adversary, to be balanced out if and when his vexatious litigation finally runs its course. They are sums to be paid promptly upon imposition as a penalty for having taken a frivolous appeal." Schiff v Simon &

Schuster, Inc., 766 F.2d 61, 62 (2d Cir. 1985) (per curiam).

Accordingly, Plaintiff's motions are denied and Defendants' motion is granted. The instant appeal is hereby dismissed without prejudice to reinstatement in the event Plaintiff presents this court with proof of compliance with the Rule 38 sanctions previously imposed. Application for reinstatement is to be made to this court no later than fourteen (14) days from entry of this judgment.

ENTERED BY ORDER OF THE COURT

Leonard Green

ISSUED AS MANDATE: September 20, 1989

COSTS: NONE

Attest:

LEONARD GREEN, Clerk

by: Tom Bennis
Deputy Clerk

September 29, 1989

RECEIVED October 2, 1989
by Leonard Green, Clerk

Mr. Leonard Green, Clerk
United States Court Of Appeals
Sixth Circuit
538 U.S. Post Office & Courthouse Bldg.
Cincinnati, Ohio 45202-3088

Re: Freed v United States
Case No. 88-2264
District Court No. 88-00607/Enslin

Dear Mr. Green:

Enclosed herewith please find Notice of
Appeal and Proof of Service in the above
referenced matter for filing.

Sincerely,

James D. Freed
Plaintiff-Appellant, Pro Per
3370 Fourth Street
Twin Lake, MI 49457

Enclosures (2)

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

CINCINNATI, OHIO

JAMES D. FREED,

Plaintiff-Appellant,
Pro Per

CASE NO.
88-2264

v.

DISTRICT
COURT NO.
88-00607
Enslin

UNITED STATES OF AMERICA;
PATRICK FINNEGAN; UNKNOWN
IRS AGENT; JOHN O. O'HUMMEL;
E.P. ERICKSON; DOUGLAS W.
HILLMAN; JOHN A. SMIETANKA;
JANICE KITTEL MANN; MICHAEL
E. KOBZA,

Defendants-Appellees.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that James D. Freed, Plaintiff-Appellant, Pro Per above named, is hereby appealing to the Supreme Court of the United States the Orders issued on May 30, 1989 and September 5, 1989 (see attached). Appeal is being made

pursuant to the Supreme Court Rules 10 &
15.

James D. Freed
Plaintiff-Appellant, Pro Per
3370 Fourth Street
Twin Lake, MI 49457

September 29, 1989

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

CINCINNATI, OHIO

JAMES D. FREED,

Plaintiff-Appellant,
Pro Per

CASE NO.
88-2264

v.

DISTRICT
COURT NO.
88-00607
Enslin

UNITED STATES OF AMERICA;
PATRICK FINNEGAN; UNKNOWN
IRS AGENT; JOHN O. O'HUMMEL;
E.P. ERICKSON; DOUGLAS W.
HILLMAN; JOHN A. SMIETANKA;
JANICE KITTEL MANN; MICHAEL
E. KOBZA,

ORDER

Defendant-Appellees.

Before: MERRITT and MARTIN, Circuit
Judges; and LIVELY, Senior
Circuit Judge

This matter is before the Court on
Plaintiff's motions to disqualify Attorney
Janice Kittel Mann, for default judgment,
and for sanctions. Defendants move to
dismiss the instant appeal for Plaintiff's

failure to satisfy a Fed. R. App. P. 38 sanction imposed in a prior appeal, namely, Freed v. Parks, No. 87-1749 (6th Cir. April 1, 1988).

Upon consideration, we find defendants' position to be well made. It is uncontested that Plaintiff has yet to satisfy the previously levied sanction; he responds that the award was somehow vague or misleading. We have reviewed the prior order and find that it clearly states the terms of the Fed. R. App. P. 38 sanction. "Damages awarded for frivolous appeals are not part of a running account between a vexatious litigant and his adversary, to be balanced out if and when his vexatious litigation finally runs its course. They are sums to be paid promptly upon imposition as a penalty for having taken a frivolous appeal." Schiff v Simon &

Schuster, Inc., 766 F.2d 61, 62 (2d Cir. 1985) (per curiam).

Accordingly, Plaintiff's motions are denied and Defendants' motion is granted. The instant appeal is hereby dismissed without prejudice to reinstatement in the event Plaintiff presents this court with proof of compliance with the Rule 38 sanctions previously imposed. Application for reinstatement is to be made to this court no later than fourteen (14) days from entry of this judgment.

ENTERED BY ORDER OF THE COURT

Leonard Green

ISSUED AS MANDATE: September 20, 1989

COSTS: NONE

Attest:

LEONARD GREEN, Clerk

by: Tom Bennisus
Deputy Clerk

No. 88-2264

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES D. FREED,)	
)	
Plaintiff-Appellant,)	
)	
v.	)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
PATRICK FINNEGAN, UNKNOWN)	
IRS AGENT; JOHN O. HUMMEL,)	
E.P. ERICKSON; DOUGLAS W.)	
HILLMAN; JOHN A. SMETANKA;)	
JANICE KITTLE MANN; MICHAEL)	
E. KOBZA,)	
)	
Defendants-Appellees.)	

BEFORE: MERRITT and MARTIN, Circuit
Judges; and LIVELY, Senior
Circuit Judge.

Upon consideration of plaintiff-
appellant's petition for rehearing, the
petition is DENIED.

ENTERED BY ORDER OF THE COURT

Leonard Green
Clerk

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

CINCINNATI, OHIO

JAMES D. FREED,

Plaintiff-Appellant,
Pro Per

CASE NO.
88-2264

v.

DISTRICT
COURT NO.
88-00607/

UNITED STATES OF AMERICA;

PATRICK FINNEGAN; UNKNOWN
IRS AGENT; JOHN O. O'HUMMEL;
E.P. ERICKSON; DOUGLAS W.
HILLMAN; JOHN A. SMETANKA;
JANICE KITTEL MANN; MICHAEL
E. KOBZA,

Enslin

Defendant-Appellees.

PROOF OF SERVICE

I, James D. Freed, hereby certify that
I have served a copy of Notice of Appeal
upon each and every one of the Defendants'
Attorneys in the above entitled action by
depositing same in the United States mail
with sufficient first class postage affixed
thereto in order to assure delivery to

their respective business addresses. The
date of depositing is September 29, 1989.

James D. Freed
Plaintiff-Appellant, Pro Per
3370 Fourth Street
Twin Lake, MI 49457

UNITED STATES COURT OF APPEALS
For The Sixth Circuit
U.S. Post Office & Courthouse Building
Cincinnati, Ohio 45202-3988

October 3, 1989

Mr. James D. Freed
3370 Fourth Street
Twin Lake, MI 49457

Re: No. 88-2264
Freed v. United States

Dear Mr. Freed:

Congress has abolished appeals to the Supreme Court of the United States of judgments entered by Courts of Appeals after September 25, 1988. Accordingly, your notice of appeal has no effect and is returned, date stamped, but not filed.

If you seek review of the decision of the Sixth Circuit Court of Appeals by the Supreme Court, you must petition for writ of certiorari within ninety (90) days after entry of a judgment in a civil case or

within sixty (60) days after entry of judgment in a criminal case. The petition must be filed directly with the Clerk of the Supreme Court, whose address is as follows:

Clerk of the Supreme Court
of the United States
1 First Street, N.E.
Washington, D.C. 20543
Telephone: (202) 479-3000

No further consideration of your case will be forthcoming from this Court.

Sincerely,

Janice E. Yates
Chief Deputy Clerk

Enclosure

JEY:m

September 16, 1987

Dear Sir:

SUBJECT: Tax Exempt Status and Notice of
Alleged Unpaid Taxes (see
attached)

In September of 1979, I filed a notice rescinding and canceling all 1040 Forms and requesting a hearing to determine whether or not I am required to file a 1040 Form and or pay a tax. Since then the IRS has failed, refused or neglected to respond to my challenge, in spite of their legal obligation to do so.

In support of all my other legal arguments, I have been unable to find any code section that requires me to file a return or pay a tax.

My findings are as follows:

The 1954 Internal Revenue Code (Title 26 USC) imposes a tax upon various objects

and then makes various persons liable for the collection and payment of the tax. How the system operates is made clinically clear in Subtitles D and E of the Code. In Section 4071 (a) a tax upon certain tires is imposed, and in Section 4071 (b) the manufacturer, producer, or importer of tires is made liable for the tax. In Section 4161, a tax is imposed upon sport fishing equipment and in Section 4162 (c) the retailer of such equipment is made liable. Section 4371 imposes a tax upon foreign insurance instruments and Section 4374 makes liable anyone who makes, issues, signs or sells the instruments. Under 4495, a tax is imposed for payment of the tax. With Section 4611, a petroleum tax is imposed and someone is made liable for its payment. Section 4461 imposes a tax on chemicals and Section 4662 (c) makes

specific persons liable for the tax. Section 4681 imposes a tax on hazardous waste and Section 4632 (b) makes liable for the tax operators of hazardous waste facilities. Taxes on 'self-dealing' and liability for their payment are imposed in Section 4941. Taxes on prohibited investments are imposed and persons made liable for their payment in Section 4944 (a) (b). Beyond these expressly-cited taxes, the Internal Revenue Code imposes many others and makes, for each such tax, some class or classes of person liable for payment thereof.

IN EVERY CASE -- WITHOUT EXCEPTION THE PROCEDURE OF IMPOSITION FOLLOWED BY MAKING LIABLE IS RELIGIOUSLY FOLLOWED, as the following table indicates:

TAX AND LIABILITY IMPOSITIONS

TAX

LIABILITY

4971 (a), (b)	4971 (a), (b)
4973 (a)	4973 (a)
4974 (a)	4974 (a)
4975 (a), (b)	4975 (a), (b)
4978 (a)	4978 (c)
4986 (a)	4986 (b)
4995 (a), (1), (A)	4995 (a), (1), (B)
5001 (a), (1), (3)	5005
5041	5043
5051	5054, 5061
5701	5703
5811 (a)	5811 (b)
5821 (a)	5821 (b)
1; 871 (a), 881	1461

THE INCOME TAX

The last category listed in the table above is the income tax. It is governed by Subtitle A of the Code. Here, the procedure of imposing tax & liability differs only slightly from that of other excises in that the tax is imposed on the incomes of one class of persons and the liability for collection thereof is imposed upon certain others.

The tax is imposed at Section 1 on incomes "from whatever source derived". The many different sources of income are

divided into two geographical categories: sources within the United States (Section 861) and sources without the United States (Section 862). Sources of income located within the United States are listed at Section 861 of Subchapter N ("Tax Based On Income From Sources Within Or Without The United States"). The only incomes derived from sources within the United States upon which a tax is imposed are those NONRESIDENT ALIENS (Section 871 and FOREIGN CORPORATIONS (Section 881) and FOREIGN CORPORATIONS (Section 881).

CONSPICUOUSLY ABSENT from Subchapter N is the imposition of a tax on incomes derived by United States citizens from sources within the United States. In all of Subtitle A of the Internal Revenue Code, a tax on income derived from sources within the United States is laid upon no other

persons but NONRESIDENT ALIENS AND FOREIGN CORPORATIONS.

Not all United States citizens are excluded from impositions of Subtitle A of Title 26, however. Section 911 imposes a tax on incomes derived from sources without the United States by United States Citizens residing and working abroad; and Section 931 imposes a tax on the income of United States Citizens derived from sources without a possession of the United States. But no statute exists which imposes a tax upon the income of United States Citizens living and domiciled in the United States, which income is derived from sources within the United States.

UNLESS ACTING AS WITHHOLDING AGENTS individuals occupying the above status are specifically excluded from Subtitle A of title 26, USC. THERE IS SIMPLY NO

STATUTORY PROVISIONS FOR THEM TO MAKE RETURNS OR PAY AN INCOME TAX. This is further supported by our religious belief and Public Law 97-280 (see attached Exhibit No. 6) states that we should study and apply the teachings of the Holy Scriptures. One of those teachings are that the citizens of this country are exempt from taxation:

APPLICATIONS AS FOLLOWS:

Matthew 17.25 Confraternity Version
-- Douay "What dost thou think Simon? From whom do the kings of the earth receive tribute or customs? From their own sons, or from others?" And he said "from others". Jesus said to him "The sons then are exempt".

and from the new English Bible:

Matthew 17.25 "What do you think about this, Simon? From whom do earthly

monarchs collect tax or toll? From their own people or from aliens"? "From aliens" said Peter. "Why then" said Jesus "Their own people are exempt".

Pursuant to our 9th Amendment Rights of Religious Freedom we rely on the words of JESUS CHRIST, the Almighty God, that we are exempt from taxation.

The foregoing position that only ALIENS are liable for taxation is supported by Title 26, USC, as was shown in above paragraphs.

We hereby declare our tax exempt status, supported by the attached affidavits.

Inasmuch as this month is the beginning of the 9th year since I first raised the question: AM I REQUIRED TO FILE A 1040 FORM AND PAY A TAX?" I think it is necessary to put time limits on your

response.

I hereby demand that the IRS present the Code Section which requires me to file a 1040 Return and the Code Section which makes me liable for a tax.

Respond within 30 days from the date of this letter with said Code Sections or a letter verifying my exempt status.

Failure or neglect to respond will be considered the same as a complete verification of my tax exempt status.

Respectfully Presented By:

James D. Freed
3370 Fourth Street
Twin Lake, MI 49457

Copies (10)

Attachments (6)

Prepared by: James D. Freed
3370 Fourth Street
Twin Lake, MI 49457

From The Office Of:

E. Joyce Kamp
Muskegon County
Register of Deeds
Muskegon, Michigan

The papers enclosed have been duly recorded. It is the desire of your Register of Deeds to be of real serviced -- and you are invited to ask for any further information at any time.

E. Joyce Kamp

LIBER 1408
Pages 447 - 458*
State of Michigan
County of Muskegon
Received For Record
1987 Sep 17 A 11:07
E. Joyce Kamp,
Register of Deeds

*Total pages recorded

ARGUMENT C'T'D

AFFIDAVIT IN SUPPORT
OF DECLARATION OF EXEMPT STATUS

STATE OF MICHIGAN)
)
COUNTY OF MUSKEGON)

WE, THE UNDERSIGNED Plaintiff-
Appellants, after first being duly sworn,
depose and declare that the statements made
in the foregoing "DECLARATION OR EXEMPT
STATUS" are true and accurate according to
the best of our knowledge and religious
belief.

James D. Freed
3370 Fourth Street
Twin Lake, MI 49457

Frances M. Freed
3370 Fourth Street
Twin Lake, MI 49457

Subscribed and sworn to before me
this 8th day of September, 1987

David L. Brace
Notary Public, Muskegon County,
My Commission expires: 12/4/90

1988 CIVIL DOCKET SHEET

JAMES D. FREED v. U.S.A., et al

Judge Enslen, Case No. G88-607 CA6

<u>Date</u>	<u>NR</u>	<u>Proceedings</u>
8/16	1	PETITION by defts, for Removal w/verification and Exhibit A (copy of complaint (summons not available)
8/16	--	RECEIPT of case letter sent to pltf. and atty. Mann.
8/16	2	MOTION by defts. and Memorandum for Extension of Time in Which to File Answer or Otherwise Plead w/cert. of service.
8/22	3	ORDER granting defts an extension of time until 10/14/88 to respond to pltf's complaint. Copies mailed to attys. J. Freed, J. Mann (R)
8/26	4	<u>AMENDED COMPLAINT</u> adding defts j. Kittel Mann, M. Kobza Summons issued and returned to pltf's rep. for service.
8/30	5	CERTIFICATE of Service for pldg. No. 4 listed above.

9/6	6	RETURN of Service for Summons & Complaint by personally serving Dottie Hopewell for Janice Kittel Mann on 8/30/88.
9/23	7	APPEARANCE by Stephen C. Corwin on behalf on deft. Michael E. Kobza.
9/23	8	MOTION by deft. M. Kobza for Dismissal and For Award of Costs, Including Reasonable Attorney Fees w/supporting statements w/attachment.
9/23	9	PROOF of Service for pldg. Nos. 7-8 listed above.
9/28	10	RESPONSE by pltf. to deft. Kobza's Motion for Dismissal w/pltf's Special Appearance, Demand for an Article III Judge to Hear deft. Kobza's Motion to Dismiss, for Award of Costs Including Reasonable Attorneys Fees w/Exhibit A w/Demand to Quash.
9/28	11	CERTIFICATE of Service for pldg. No. 10 listed above.
10/5	12	MOTION by defts USA, John Smietanka, Douglas Hillman for Sanctions and Response to pltf's Motion to Amend the Complaint w/Brief in Support of Motion w/Exhibits A-D w/attached Certificate

of Service.

10/12	13	MOTION by defts USA, employees of Internal Revenue, Patrick Finnegan, John O. Hummel, Eric P. Erickson to Dismiss and for Order Imposing Sanctions w/Memorandum in Support of Motion w/Exhibits A-D w/Certificate of Service.
10/19	14	RESPONSE by pltf. to defts' Motion for Sanctions and Response to pltf's Motion to Amend the Complaint) w/Demand to Quash and for Sanctions w/Brief in Support of Response w/Exhibits A-B w/attached Proof Of Service.
10/26	15	DEMAND by pltf. to Compel Discovery w/Brief in Support.
10/26	16	DEMAND by pltf. for Status Hearing w/Brief in Support.
10/26	17	RESPONSE by pltf. to defts' Motion of 10/11/88 (#13) and Demand to Quash and for Sanctions w/Brief and Memorandum in Support of Response w/Exhibits A-D.
10/28	18	CERTIFICATE of Service by pltf. for pldg. Nos. 15-17 listed above.
10/28	19	ORDER granting pltf's Demand

for Status Hearing setting Status Conf. for 11/23/88 at 2:30 p.m. before Mag. Rowland. Pltf's Demand to Compel Discovery As Of Right will be heard at same time. Copies mailed to J. Freed, J. Mann, S. Corwin, B. Rowan (R).

11/8	20	OPINION (7 pages)
11/8	21	JUDGMENT ORDER in accordance w/Opinion denying pltf's Action to Amend Complaint; granting deft. Kobza's Motion to Dismiss and for Sanctions; granting defts' USA, Finnegan, Hummel, Erickson, Hillman, Smietanka and Unknown IRS Agent's Motion to Dismiss and for Sanctions in the amount of \$1,200; pltf. to pay to U.S. District Court for the W.D. of Michigan \$1,200 within 90 days of this Order. Copies mailed to J. Freed, J. Mann, S. Corwin, B. Rowan (E) (2 pages)
11/9	22	OBJECTION by pltf. to court order of 10/28/88.
11/9	23	DEMAND by pltf. to court order of 10/28/88.
11/9	24	CERTIFICATE OF SERVICE for pldgs. #23 & 24.

11/9	25	ORDER that pltf's objection to court order of 10/28/88 is moot and is DENIED.
11/14	--	COPIES of above order mailed to pltf & Attys Mann, corwin, & Rowan.
11/15	26	DEMAND by pltf. to disqualify Judge Enslen and for relief from judgment order of 11/8/88 w/brief in support & proof of service.
11/28	27	AFFIDAVIT of costs and fees incurred in defense Atty. Corwin w/proof of service.
12/1	28	ORDER that pltf. pay to deft. Kobza the sum of \$450.00 within 30 days; copies to pltf. and Attys. Mann, Corwin & Rowan.
12/8	29	NOTICE OF APPEAL by pltf. from the Judgment entered on 11/8/88 with attached copies of pldgs. 20 & 21 and Certificate of Service.
12/13	--	PHONE Conversation with Judge's office indicating they are not going to rule on pldg. #26, pltf's demand to disqualify Judge Enslen and for relief from judgment, as case is closed.
12/13	--	MAILED Record on Appeal to CCA.

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

CINCINNATI, OHIO

JAMES D. FREED,

Plaintiff-Appellant,

v.

APPEALS NO.
NO. 88-2264

UNITED STATES OF AMERICA,
PATRICK FINNEGAN; UNKNOWN
IRS AGENT; JOHN O. HUMMEL;
E.P. ERICKSON; DOUGLAS W.
HILLMAN, JOHN A. SMETANKA;
JANICE KITTEL MANN;
MICHAEL E. KOBZA,

Defendant-Appellees,

BRIEF IN SUPPORT OF
NOTICE OF APPEAL

TITLE PAGE

Submitted by:

James D. Freed
Plaintiff-Appellant
3370 Fourth Street
Twin Lake, MI 49457

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STATEMENT OF THE ISSUES

These instant appeal issues are presented in the interest of justice and for the purpose of protecting and preserving Plaintiff-Appellant's 9th Amendment substantive, procedural, statutory and common law rights.

MEMORANDUM OF CONSTITUTIONAL LAW

"No department of the government has any other powers than those delegated to it by the people" Hepburn v Griswold, 8 Wall. 611; (see Exhibit "F")

1. Did "WE THE PEOPLE" delegate territorial jurisdiction to the United States Government beyond the express terms of Article 1, Section 8, Clause 17, United States Constitution?
Plaintiff-Appellant says NO
Defendant-Appellee to be heard . . .

2. DOES the Internal Revenue Service have Territorial Jurisdiction beyond the express terms of Article 1, Section 8, Clause 17, the United States Constitution?

Plaintiff-Appellant says NO

Defendant-Appellee to be heard . . .

3. Does the Internal Revenue Service have jurisdiction beyond the express terms of title 26 USC?

Plaintiff-Appellant says NO

Defendant-Appellee to be heard . . .

4. Does the Internal Revenue Service have jurisdiction beyond the express terms of Botta v Scanlon, 288 F 2d 504 (1961)?

Plaintiff-Appellant says NO (see Exhibit A)

Defendant-Appellee to be heard . . .

5. DOES the Internal Revenue Service

have jurisdiction beyond the express terms of Gould v Gould, 245 U.S. 151 (1917)?

Plaintiff-Appellant says NO (see Exhibit B)

Defendant-Appellee to be heard . . .

6. Does the Internal Revenue Service have jurisdiction beyond the express terms of Bothke v Fluor Engineers and Constructors, Inc. 713, F 2d, 1414 (1983)?

7. Does the Michigan State Court (i.e. Muskegon County Circuit Court) have concurrent territorial jurisdiction over Article 1, Section 8 Clause 17 federal properties?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

8. Does the Michigan State Court have jurisdiction to hear the instant

Complaint?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

9. Are the individual States the "PRINCIPAL" and the Federal Government merely an "AGENT" for said States?

Plaintiff-Appellant says "YES".

Defendant-Appellee to be heard. . .

10. Does Muskegon County Circuit Court — Judge Michael E. Kobza have jurisdiction to dismiss the instant complaint if he is not licensed to practice law as required by Article VI, Section 19, Constitution of Michigan (1963)?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

11. Does the United States District Court have removal jurisdiction over

a State Court "DISMISSED COMPLAINT";
or removal jurisdiction over a State
Court Complaint which does not
qualify under the limited conditions
of Section 12, Sess. 1, Ch. 20, US
Statutes At Large (1789)?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

12. Is the United States District Court
in Kalamazoo, Michigan an Article
III Court?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

13. Is United States District Court
Judge Richard A. Enslen an Article
III Judge?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

14. Is Pacemaker Diagnostic Clinic Of
America v Instromedix, 725, F 2d 539

(1984) binding on the United States District Court in Kalamazoo, Michigan?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

15. Is Pacemaker (supra) binding on United States District Court Judge Richard A. Enslen?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

16. In Michigan Law MCL 600.916 binding on AUSA Janice Kittel Mann?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

17. Is Michigan Law MCL 600.916 binding on Attorney Stephen C. Corwin?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

18. Is Michigan Law MCL 600.916 binding on Government Attorneys as they

practice law in the State of Michigan?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

19. Is District Court Judge Richard A. Enslen an Defendant Muskegon County Circuit Court Judge Michael E. Kobza bound by --

Hagens v Lavine 415,

US 533, n5;

Melo v US, 505 F 2d,

1026;

Joyce v US 474, F

2d, 215;

Rosemound v Lambert

469 F 2d, 416;

Lantana v Hopper

102, F 2d, 118

Regarding challenge and proof of jurisdiction?

Plaintiff-Appellant says YES.

Defendant-Appellee to be heard . . .

20. Does the United States District Court have jurisdiction over monetary sanctions that do not comply with Title 31, USC, Section 371?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

21. Has the United States Congress declared the new "Money Of Account" since silver was removed from circulation?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

22. Are monetary sanctions collectible if they do not conform to Title 31, USC, Section 371?

Plaintiff-Appellant says NO.

Defendant-Appellee to be heard . . .

23. Does United States District Court Judge Richard A. Enslen have jurisdiction to issue his Opinion and Judgment Order of November 8, 1988 when the removal of the instant complaint to his court was unlawful? Plaintiff-Appellant says NO. Defendant-Appellee to be heard . . .

BRIEF IN SUPPORT OF
NOTICE OF APPEAL
STATEMENT OF THE CASE

1. On or about the date of April 7, 1988 Defendant Revenue Officer Patrick J. Finnegan of Muskegon, Michigan, acting under color of an illegal assessment, lien and/or levy, did grossly violate the conditions, terms and/or mandates of Title 26 USC;
did grossly violate the conditions, terms and/or mandate of Botta v Scanlon, 288 F 2d, 504 (1961) (see Exhibit A); did grossly violate the conditions, terms and/or mandate of Bothke v Fluor Engineers and Constructor, Inc. 713, F 2d, 1414 (1983) (see

Exhibit C) by unlawfully seizing two of the Plaintiff-Appellant's pay checks in the total amount of \$351.80, and which unlawful seizure was the first in an IRS plan of massive unlawful seizure of all of this Plaintiff-Appellant's future pay checks.

2. Plaintiff-Appellant countered said unlawful seizure by filing the instant complaint in the Muskegon County Circuit Court, Muskegon, Michigan, on the date of August 2, 1988 (see file copy of Complaint attached to Docket No. 1). Said Complaint was commenced with a caveat of "Territorial and Original Jurisdictional absence" should

any one attempt to remove said Complaint to a Federal Court, and it was filed pursuant to the authority of: -

Testa v Katt, 330 US 386.67 St.

Ct. 810, 91 L.Ed. 967 (1947);

Clafin v Houseman, U.S.

Reports, Volume 93, Page 136,

137;

Dudley v Bell, 50 Mich. Appeals

678;

3. Muskegon County Circuit Court Judge Michael E. Kobza, acting absent the mandated 'license to practice law' as required by Article VI, Section 19, Michigan Constitution (see Exhibit D) did summarily dismiss said Complaint with prejudice on the date of August

15, 1988 (see Exhibit E, 3 pages) thus depriving this Plaintiff-Appellant of his substantive and procedural right to due process of law as provided in the Michigan Court Rules; and did so without a hearing on "territorial or original jurisdiction".

4. Said "DISMISSED" Complaint was "REMOVED?" on the following day (August 16, 1988) by AUSA Janice Kittel Mann to the United States District Court in Kalamazoo, Michigan who represented and designated herself as Counsel for the Federal Defendants under color of Bar Number (P34773) and in violation of Michigan Law MCL

600.916 (see Docket No. 1) and (see Plaintiff-Appellants Objection To Appearance as filed in this Court of Appeals). Said unlawful removal denied Plaintiff-Appellant's substantive and procedural right of appeal to the Michigan Court of Appeals from Judge Kobza's Dismissal With Prejudice.

5. Deprived of his substantive and procedural right to file for Relief From Judgment in the Muskegon Court by Judge Kobza's threat (Exhibit E) and deprived of his substantive and procedural right to appeal to the Michigan Court Of Appeals by Janice Kittel Mann's

unlawful REMOVAL? proceedings
(see Docket No. 1) this
Plaintiff-Appellant pursued the
only remedy left to him and
filed an Amended Complaint
under Special Appearance on the
date of august 26, 1988 to
include both Michael E. Kobza
and Janice Kittel Mann as
Defendants (see Docket No. 4).
As the Docket will show, the
Amended Complaint was filed
under the banner of:

"In the Circuit Court For The County
Of Muskegon Unlawfully removed to
the United States District Court,
Kalamazoo, Michigan"

Plaintiff-Appellant never once
acknowledged any jurisdiction
in the United States District

Court.

6. Amended Defendant Michael E. Kobza, through his unlicensed Attorney, Stephen C. Corwin, then filed a "Motion To Dismiss" with costs in the United States District Court on the date of September 23, 1988 (see Docket No. 8).
7. Plaintiff-Appellant, under Special Appearance, filed a response to Defendant Kobza's Motion To Dismiss and For Costs on the date of September 28, 1988 (see Docket 10) with a demand for an Article III Judge, to hear Defendant Kobza's Motion, pursuant to Pacemaker Diagnostic Clinic Of America v Instromedix, 725 F

2d, 537 (1984).

8. On the date of October 5, 1988, Defendants, John A. Smietanka and Douglas W. Hillman, filed for sanctions with response to Amended Complaint; and on the date of -October_ 12, 1988, defendants, USA, Patrick Finnegan, John O. Hummel and E.P. Erickson, filed a Motion To Dismiss and for sanctions. (see Docket Nos. 12 and 13)
9. On the date of October 19, 1988, Plaintiff-Appellant filed his response to the Federal Defendants Motion To Dismiss and for sanctions. (see Docket No. 14)
10. On the date of October 26, 1988, Plaintiff-Appellant filed

a demand to compel discovery
and for a status hearing before
an Article III Judge.

11. On the date of October 28,
1988, the United States
District Court issued an ORDER
granting a STATUS CONFERENCE
before a magistrate which ORDER
was tantamount to a denial for
the demand for a status hearing
before an Article III Judge.

12. On the date of November 8,
1988, the United States
District Court did issue an
"OPINION" and "JUDGMENT ORDER"
which is the object of this
instant appeal.

ARGUMENT

This is an appeal from the "OPINION AND JUDGMENT ORDER" of November 8, 1988 as issued by the United States District Court Judge Richard A. Enslen, which is now on file in this Court of Appeals, and which "OPINION" begins with the following statements:

"In this action Plaintiff once again attempts to avoid payment of federal income taxes by filing a complaint..."

This statement is deceptive for the reason that it is based upon the obvious assumption that this Plaintiff-Appellant has a Federal Income Tax Liability. As Judge Enslen well knows, the Complaint, that he refers to, commences with a challenge to territorial jurisdiction (to which the Defendants have been

deafeningly silent) and the 53 page Report from the General Services Administration, that is attached to the Complaint as Exhibit F, makes the following statement on page F-3, TO WIT:

"The compilation of this inventory reflects the interest which GSA together with the Bureau Of Budget and the Department Of Justice, " (emph. added)

and again on page F-3:

"The inventory will be made available to federal agencies and state governments....."

and on page F-15

"GENERAL SERVICES ADMINISTRATION
CIRCULAR NO. 275

TO: Heads Of Federal Agencies

SUBJECT: Inventory of legislative
jurisdiction over federal areas

within the states"

This GSA Report was compiled pursuant to the mandate of Article 1, Section 8, Clause 17, United States Constitution which provides that Congress shall have power -

"to exercise exclusive Jurisdiction in all Cases whatsoever, over such district (not exceeding 10 miles square) as may be cession of particular states, and the Acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings"

As the Report indicates, this information is in the possession of the "Department Of Justice" and "Heads Of Federal Agencies" which includes the United States Attorney General and the Internal Revenue Service Commissioner.

The Report goes on to show that neither the IRS nor the United States District Court has legislative/territorial jurisdiction over this instant Plaintiff-Appellant, over his place of residence in Muskegon County, Michigan, nor over the Muskegon County Circuit Court Building. If there is no legislative/territorial jurisdiction, then where is the Federal Income Tax Liability that Judge Enslen is so determined to assume? and why does the Justice Department continue to harass citizens of the several states when they

have the information in their possession that they have no legislative/territorial jurisdiction? However, the IRS, which, according to the GSA Report, has information that indicates their lack of jurisdiction over this Plaintiff-Appellant, continues to harass this Plaintiff-Appellant by unlawfully levying and seizing his paychecks in violation of Bothke v Fluor Engineers and Constructors, Inc., 713, F 2d, 1414 (1983), where the court said:

"Tax liability is a condition precedent to the demand. Merely demanding payment does not cause liability" (Exhibit C)

Plaintiff-Appellant admits the IRS demand but denies that any tax liability was ever claimed or proven. Said IRS levy and seizure is also in violation of

Gould v Gould, 245, US 151 (1917) wherein the Court said:

"In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government and in favor of the citizen" (see Exhibit B)

The IRS has extended the levy and seizure provisions of Title 26 USC, by implication, beyond the clear import of the language used and has enlarged the operation of Section 6331, Title 26 USC so as to embrace matters not specifically pointed out. The clear import of Section

6331 language is that--

"Levy may be made upon the accrued salary or wages of an officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or District Of Columbia....."

Said IRS levy and seizure has also extended the provisions of Section 6331 Title 26 USC by embracing matters not specifically pointed out by levying and seizing the wages of this United States citizen who lives and is domiciled in the United States and whose income is derived from sources within the United States and who is NOT an officer, employee, or elected official of the United States or the District Of Columbia or any agency or instrumentality thereof; and again has

failed to prove tax liability.

Said IRS levy and seizure is also in violation of Botta v Scanlon, 288, F 2d, 504 (1961) where in the Court said:

"Tax officials are not vested with absolute power of assessment against individuals not specified in statutes as persons liable for tax without an opportunity for judicial review of status before persons' property is seized....." (emph. added) (see Exhibit A)

However, contrary to Botta v Scanlon, the IRS levied and seized Plaintiff-Appellant's property (paychecks) without judicial review of status BEFORE seizure and in spite of the fact that the IRS Assessment was made on an individual not specified in Title 26 USC, such as ABSENCE OF A STATUTE THAT

SPECIFICALLY IMPOSES A TAX ON UNITED STATES CITIZENS LIVING AND DOMICILED IN THE UNITED STATES WHOSE INCOME IS DERIVED FROM SOURCES WITHIN THE UNITED STATES.

Judge Enslen is in gross error when he makes the said opening statement -

"In this action Plaintiff once again attempts to avoid payment of Federal Income Taxes by filing a Complaint....."

FURTHERMORE, in the case of Gregory v Helvering, 293, US 465; the United States Supreme Court said:

"The legal right of a taxpayer to decrease the amount of what would otherwise be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted"

As the Supreme Court said, avoiding

taxes within the law is a legal right and this Plaintiff has just cited the law which permits him to avoid payment pending proof of liability; therefore Plaintiff-Appellant fails to see a problem with avoidance.

Judge Enslen's "OPINION" continues on page 2 with this statement --

"The Court will deny Plaintiff-s request to amend his complaint for several reasons.

First, the Complaint which Plaintiff seeks to amend was dismissed with prejudice before the action was removed to this court. "There is nothing to amend." (emph. added)

The statement above is a study in contradiction. First the judge admits that the complaint was 'dismissed with prejudice' before it was removed to his

court; and then secondly, rules that "THERE IS NOTHING TO AMEND". If, as the judge ruled, "THERE IS NOTHING TO AMEND", then there was 'Nothing To Remove'; and since, by his own admission, he lacked jurisdiction over the amendment, he therefore lacked jurisdiction over the Removal Action of a "DISMISSED COMPLAINT", and is totally lacking in jurisdiction over this entire matter -- his 'Judgment Order' for sanctions of \$1,200 being totally void.

"Absent jurisdiction, judgments are void" Sandnes v Sheriff, 299 NYS 9:

Judge Enslen's OPINION continues on pages 3 and 4 with reference to Plaintiff-Appellant's former litigations, where he states --

"I note the arguments presented by Plaintiff in this action are similar

if not identical to those presented
in Freed v Parks, 685-1143CA6 (W.D.
Mich. 1985)

Judge Enslen is mistaken.

The argument/issue of Conspiracy To
Commit Genocide was never presented in
Freed v Parks, either similarly or
identically; nor was it presented in U.S.
v Hoekenga and Freed or Freed v
Commissioner for the reason that it was
an entirely new issue that just recently
came to light. (see copy of Complaint
attached to Docket No. 1)

The argument/issue of an unlawful
seizure was never presented in Freed v
Parks or any other litigation, either
similarly or identically, for the reason
that this was the first time that an
unlawful or any other kind of seizure had
taken place against this Plaintiff-

Appellant.

The argument/issue of Territorial Jurisdiction was never presented in Freed v Parks, either similarly or identically; nor was it presented in any of the other litigation referred to by the Judge, as this Plaintiff-Appellant just recently was made aware of the General Services Administration Report which proves beyond doubt that neither the United States District Court nor the Internal Revenue Service have Territorial Jurisdiction over this Plaintiff-Appellant.

Again, referring to the aforementioned litigation, the Internal Revenue Service never did claim or prove that this Plaintiff-Appellant has a Federal Tax Liability as required by Botta v Scanlon, (supra); Gould v Gould, (supra); Bothke v Fluor engineers and

Constructors, Inc. (supra); and never did Judge Enslen rule that this Plaintiff-Appellant has a tax liability. Therefore, all of the litigation referred to by said Judge Enslen should be "construed most strongly against the government and in favor of the citizen" (Gould v Gould, supra).

Furthermore, not one of the judge-mentioned cases was decided by an Article III Judge as required by Pacemaker Diagnostic Clinic Of America v Instromedix, 725 F 2d 539 (1984) for Federal litigants.

Judge Enslen's Judgment Order for \$1,200.00 is void for lack of jurisdiction over any sanction that is contrary to Title 31 USC Section 371, TO WIT:

371 "The money of account of the

United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousands, a dime being the tenth part of a dollar, a cent the hundredth part of a dollar, a mill the thousandth part of a dollar; and all accounts in the public offices and all proceedings in the courts shall be had and kept in conformity to this regulation (see attached Exhibit G)

Congress has denied "dollar" in

1. United States Statutes At Large, 246, as:

"371 1/4 grains of fine silver
or
416 grains of standard silver"

but in 1963 silver was removed from circulation with the result that Congress

has not declared the new "money of account" to replace silver.

- THE BOTTOM LINE EQUATION - NO SILVER PLUS NO MONEY OF ACCOUNT equals NO TAX LIABILITY.

CONCLUSION

For the reasons shown, the United States District Court never lawfully acquired jurisdiction over the "DISMISSED COMPLAINT" because it was barred from removal by the "dismissal", barred by the terms of Section 12, Sess. 1, Chap. 20, U.S. Statutes At Large (1789) - (see Exhibit H, 3 pages); and barred for want of Territorial Jurisdiction; and the "Judgment Order and Opinion" that this Plaintiff-Appellant is appealing from is void.

RELIEF SOUGHT

WHEREFORE Plaintiff-Appellant hereby

petitions this Court Of Appeals to rule as follows:

1. That the Complaint was not lawfully removed and therefore NOT removed;
2. That said Complaint was not lawfully dismissed by Defendant, Muskegon County Circuit Court Judge Michael E. Kobza for want of the required "license to practice law" (see Objection to the Appearance Of Janice Kittel Mann as filed with this Court), therefore NOT removed.
3. That said Complaint be heard by the Jury that Plaintiff-Appellant paid for, and that Circuit Court Judge Michael E. Kobza be barred from the

proceedings for lack of license jurisdiction.

and also rule that:

4. The Muskegon County Circuit Court is the proper court to hear said Complaint pursuant to the authority of:

Testa v Katt, 330 US, 67 S. Ct. 810, 91 L. Ed. 967 (1947)

Claflin v Houseman, U.S. Reports, Volume 93, Page 136, 137

Dudley v Bell, 50 Michigan Appeals, 678;

and pursuant to the "Definitive Treaty Of Peace" (Exhibit 1, 2 pages) in which the original 13 States established the Federal Government as an "AGENT" (see Dred Scott v Sanford, 13 How.

393) (Exhibit K), the original 13 States retaining their sovereignty (see Article II, Articles Of Confederation) with all future States accepted into the Union on an equal footing with the original 13 States which includes this State Of Michigan (see Exhibit J) and which leaves the State Of Michigan the "Principal" in this matter, over the Federal Government which is merely an "AGENT" for the State Of Michigan, (UNAUTHORIZED ACTS BY AN AGENT ARE NOT BINDING ON THE PRINCIPAL) and therefore the Muskegon County Circuit Court has proper Principal/ Territorial Jurisdiction

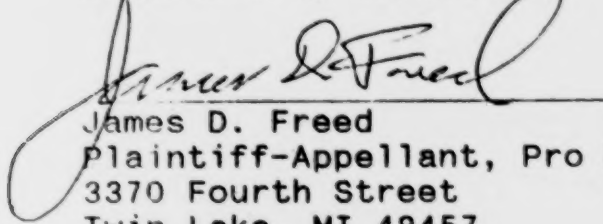
(superseding any claimed United States District Court jurisdiction) to hear said Complaint by a Jury.

5. And that all requests for sanctions are void for want of current Money Of Account. Plaintiff-Appellant further Petitions this Court for an injunction against the Internal Revenue Service pending proof of Plaintiff-Appellant's tax liability.

This injunction is necessary to avoid further litigation in defense of future unlawful IRS proceedings against this Plaintiff-Appellant if and when they continue to violate the clear terms of Botta v Scanlon; Gould v Gould; and Bothke v Fluor Engineers and

Constructors, Inc. (supra).

Respectfully submitted,

A handwritten signature in cursive script, reading "James D. Freed", is written over a horizontal line. The signature is fluid and stylized, with the first and last names being more prominent than the middle initial.

James D. Freed

Plaintiff-Appellant, Pro Per
3370 Fourth Street
Twin Lake, MI 49457

Dated: January 17, 1989